IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1657 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.M. DHANDHUKIA, JUNIOR SCIENTIFIC ASSISTANT

Versus

THE DIRECTOR F HEALTH & MEDIC-AL SERVICES AND MEDICAL EDUC.

Appearance:

1. Special Civil Application No. 1657 of 1987

MR IM PANDYA for Petitioner No. 1

MR LR POOJARI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/03/2004

ORAL JUDGEMENT

#. The petitioner challenges the orders dated 27th

March, 1987 and 9th April, 1987 at Annexure:A by which he was appointed to his original post of Laboratory Technician from the post of Junior Scientific Assistant.

#. According to the petitioner, he came to be appointed as Laboratory Technician by order at Annexure:C to the petition dated 19th September, 1961, by the Director of Health & Medical Services (Medical), Ahmedabad. He had received three months' training in Tuberculosis Culture Work from January, 1977. According to the petitioner, one post of Laboratory Technician came to be upgraded into Junior Scientific Assistant in the payscale of Rs. 250-550 on 4th April, 1975. The petitioner was initially appointed as Laboratory Technician in the payscale of Rs. 100-200. By the order dated 14th April, 1978, a copy of which is at Annexure:E/1, the petitioner who was working as Laboratory Technician in the District T.B. Centre at Limbdi was transferred and appointed as Junior Scientific Assistant at T.B. Demonstration & Training Centre, Ahmedabad to the said upgraded post. The said transfer was ordered in public interest and the petitioner was ordered to report for duty with the Director, T.B. Demonstration & Training Centre, Ahmedabad. The Director of T.B. Demonstration & Training Centre wrote a letter dated 23.1.79 to the Director of Health Services (Health Section), Ahmedabad in the context of an application made by the petitioner who was working as Junior Scientific Assistant that, the petitioner had received special training in culture work in T.B. and it was necessary that he should stay within the compound of the hospital so that he could keep continuous watch on some of the units such as Incubator room and Cold Storage where maintenance of desired temperature was very important, and reliable results and preservation of supplies such as Culture Media, B.C.G. Vaccination etc. and, therefore, he may be provided with a quarter as a special case.

#. The petitioner came to be sent back to the original place by the impugned orders dated 27.3.73 and 9.4.87 at Annexure:A to the petition. It has been contended on behalf of the petitioner that the impugned orders have been passed in violation of principles of natural justice, because, no hearing was given to the petitioner before sending him back to his original post from the upgraded post. It was submitted that the impugned order amounted to reverting the petitioner to a lower post. This could not have been done, since his appointment by transfer to the upgraded post of Junior Scientific Assistant was made in public interest and it was not stated in that order that the transfer was temporary or by way of ad-hoc appointment.

#. The learned Assistant Government Pleader relying upon the affidavit-in-reply filed on behalf of the respondents submitted that the posting of the petitioner was only to an equivalent post in a different cadre of Junior Scientific Assistant and, therefore, the petitioner was rightly sent back to his original cadre as Laboratory Technician. It was also submitted that the qualifications for the post of Junior Scientific Assistant prescribed under the Rules were different and when qualified persons were available under the Recruitment Rules for the post, the petitioner could not claim a right to continue in it.

#. It is clear from the record that the petitioner who was initially recruited as Laboratory Technician in the scale of Rs. 100-200 came to be appointed by transfer to the upgraded post of Junior Scientific Assistant. One post of Laboratory Technician came to be upgraded by the government order dated 4th April, 1975 into Junior Scientific Assistant in the payscale of Rs. 250-550 in the T.B. Demonstration & Training Centre, Ahmedabad. Order at Annexure:H, dated 4th April, 1975 issued by the government shows that it was issued at the proposal sent by the Director of Health Services (Healt h), Ahmedabad, vide his letter dated 18th March, 1973. Therefore, upgradation of one post of Laboratory Technician into Junior Scientific Assistant was not a mere temporary feature but was a deliberate step taken in view of the circumstances explained by the Director of Health Services. When the petitioner came to be appointed by transfer to the said upgraded post by the order dated 7.4.78, it was nowhere mentioned in the order that it was only a temporary appointment. He continued in that post till he came to be sent back to his original post by the impugned orders in an unceremonious way without giving him any opportunity to show cause as to why he should not be reverted from an upgraded post to his original post. The impugned orders, therefore, clearly violated the principles of natural justice. There is no substance in the contention that when qualified persons under the Rules were available, the petitioner could not claim a right to continue in the post of Junior Scientific Assistant, because, the Rules in which qualifications were laid down were framed only on 25th October, 1983 as per Annexure:I to the affidavit-in-reply and these Rules contemplated appointment of Junior Scientific Assistant Class-III only by direct selection. These Rules could not have been treated as draft Rules at any point of time when the petitioner came to be appointed by transfer on 7.8.1978 to the upgraded post of Junior Scientific

Assistant. The impugned orders reverting the petitioner from the upgraded post of Junior Scientific Assistant to his original post of Laboratory Technician are, therefore, hereby set aside. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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